HON'BLE SRI JUSTICE P.S. NARAYANA

–

+W.P.No.5666 of 1997

%03-12-2004

–

Chantapalli Nadipi Subharayudu,

S/o Naganna, Atmakur Mandal,

Khammam District.

..... Petitioner

VERSUS

$ The District Collector, Kurnool and two others.

.....Respondents

< GIST:

> HEAD NOTE:

! **Counsel for petitioner : Mr.M.S.R.SUBRAHMANYAM**

^ **Counsel for Respondents: G.P. FOR LAND ACQUISITION**

? Cases referred

1. AIR 1977 SC 183

2. AIR 1980 SC 319

3. 1983(1) ALT 233

4. AIR 1979 AP 159

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 5666 of 1997

Between:

Chatapalli Nadipi Subbarayudu s/o naganna
atmakur mandal, khammam dist.

..... PETITIONER

AND

1 The Disttrict Collector
Kurnool
2 The Mandal Revenue Officer,

Bandi Atmakur Mandal, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating and leading to the notification bearing RC. NO. L/89/96 dt. 25/3/96 issued by the 1st respondent under sec-4(1) of the land acquisition act published in the Kurnool district gazette, extra ordinary dt. 30/3/96 relating to Ac.1.30 cents in S.No.517/1c, 517/2e & 516 of a koduru village Bandi Atmakur mandal, Kurnool District and issue a writ order or direction more particularly a writ in the nature of mandamus under art. 226 of the constitution of India and declare the aforesaid acquisition proceedings of the petitioners land as illegal and void.

Counsel for the Petitioner: MR.M.S.R.SUBRAHMANYAM

Counsel for the Respondents: GP FOR LAND ACQUISITION

The Court made the following :

-

-

-

-

-

ORDER:

Chatapalli Nadipi Subbarayudu, the Writ Petitioner, filed the present writ petition praying for calling of records relating to the notification bearing RC.No.L/89/96 dated 25-03-1996 issued by the 1st respondent under Section 4(1) of the Land Acquisition Act published in the Kurnool District Gazette Extraordinary dated 30-03-1996 relating to Ac.1.30 cents in Sy.Nos.517/1C, 517/2E & 516 of A.Koduru Village, Bandi Atmakur Mandal, Kurnool District and to issue a Writ, order or direction more particularly in the nature of Mandamus under Article 226 of the Constitution of India and to declare the aforesaid acquisition proceedings of the petitioner's land as illegal and void and pass such other appropriate orders.

Sri M.S.R.Subrahmanyam, the learned Counsel representing the writ petitioner, would submit that in the facts and circumstances of the case, the very invocation of the urgency clause under Section 17 of the Land Acquisition Act (hereinafter referred to as 'Act' for the purpose of convenience) is unsustainable. The learned Counsel also pointed out that invoking urgency clause is not an empty formality and some material should be there before the competent authority who should satisfy himself relating to the invocation of the urgency clause before invoking the provisions of the Section 17 of the Act. The Counsel also would submit that by virtue of invocation of the urgency clause, the provisions of Section 5-A would not apply to the acquisition proceedings. The learned Counsel also pointed out that even otherwise the respondents have not deposited 80% of the compensation before taking possession of the land and under the present acquisition no such deposit had been made so far. The Counsel also had pointed out that the possession of the land also was not taken within 90 days as per Section 17(5)(b) of the Act as amended by A.P.Act of 1983. The learned Counsel also had pointed out that this land is not at all suitable for providing house sites and there are other convenient lands and also Government lands within the near vicinity. Apart from this aspect of the matter, the learned Counsel also would submit that the petitioner is a small farmer and his livelihood would be affected by the proposed action. The Counsel also had pointed out that this Court made an order of status quo while ordering notice before admission on 21-03-1997.

Per contra, the learned Additional Government Pleader for Land Acquisition would contend that the stand taken by the writ petitioner that he is a small farmer is an incorrect stand, since apart from the land of Ac.1.30 cents proposed to be acquired, the petitioner is also having Acs.8.57 cents of land and hence he does not fall within the meaning of small farmer or marginal farmer. The learned Counsel also had pointed out that inasmuch as the proposed acquisition is for the purpose of providing house sites, 1st respondent was satisfied about the urgency and had issued notification under Section 4(1) of the Act invoking the urgency clause under the provisions of the Section 17 of the Act. Hence, the acquisition proceedings are in accordance with law and the writ petition is liable to be dismissed.

Heard both the Counsel.

The Writ Petitioner had questioned the proposed acquisition of his land to an extent

of Acs.1.30 cents in Sy.Nos.517/1C, 517/2E & 516 of A.Koduru Village, Bandi Atmakur Mandal, Kurnool District. It is the case of the petitioner that he had purchased the said land under a registered sale deed dated 24-05-1994 and after purchase, the petitioner invested considerable amount for improving the said land for wet cultivation. It is also stated that the writ petitioner is a small farmer and totally dependent upon the aforesaid land and out of the Ac.1.30 cents, Ac.0.30 cents being used for Kallam and Cattle shed and the remaining Ac.1.00 cent is being used for the purpose of raising paddy crop. It is also stated that an extent of Acs.1.30 cents as aforesaid had been notified for acquisition under Section 4(1) of the Act by a notification bearing RC.No.L/89/96 dated 25-03-1996 issued by R1 and published in Kurnool District Gazette Extraordinary dated 30-03-1996 and it was specified in the said notification that the said land was required for the purpose of providing house sites for S.Cs. and weaker sections and in view of the urgency, the provisions of Section 5-A of the Act would not be applicable to the said acquisition proceedings and accordingly enquiry under Section 5-A of the Act had been dispensed with. But however, possession of the land was not taken within 90 days, as specified under Section 17(5)(b) of the Act, as amended by A.P. Act of 1983. It is also stated that the respondents are expected to deposit 80% of the compensation before taking possession of the land under acquisition and no such deposit had been made. It was further averred in the affidavit filed in support of the writ petition that the petitioner is a small farmer and he has no other properties and made considerable investment and the petitioner also dug a bore well in the said land and has been using the water for cattle and other needs and all around his land there is fencing and is adjacent to pedda cheruvu. It is also specifically stated that considerable extent of Government lands are still available and those lands are more suitable for providing house sites, which are nearer to the village and the lands under proposed acquisition are in the low lying area by the side of the tank bund and there is possibility of submersion in the rainy season. No doubt, it was also stated that at the instance of a particular political party the land acquisition proceedings had been initiated.

Respondent No.2 filed counter-affidavit stating that the petitioner is not landless poor and he is having an extent of Acs.8.57 cents in A.Kodur village. It is also stated that an extent of Acs.7.69 cents in Sy.No.259/B2 etc., of A.Koduru village was proposed for acquisition for the purpose of providing of house sites in which the land measuring an extent of Acs.1.30 cents in Sy.No.516 and Sy.Nos.517/1C and 517/2E

of A.Kodur village owned by the petitioner also was included. The draft notification under Section 4(1) of the Act had been published in Kurnool District Gazette Extraordinary dated 30-03-1996 and the same was published in two local newspapers viz., Visalandhra dated 31-03-1996 and Eenadu dated 31-03-1996 and was published in A.Kodur Village at a conspicuous place by beat of tom tom and by affixture on the land on 25-04-1996. It is also stated that the draft declaration under Section 6 of the Act relating to an extent of Acs.7.69 cents of A.Kodur village proposed for acquisition for the provision of house sites was approved by the Kurnool Collector vide Rc.(L) 97/96 dated 25-03-1996 in which the land measuring an extent of Acs.1.30 cents in Sy.No.516, Sy.No.517/1C and 517/2E of A.Kodur village owned by the petitioner also had been included and the same was published in Kurnool District Gazette Extraordinary dated 13-04-1996 and the same was published in two local newspapers viz., Visalandra dated 17-04-1996 and Eenadu dated 27-04-1996 and was published in the village at a conspicuous places and also by beat of tom tom and by affixture on the land on 25-04-1996. It was further pleaded in the counter-affidavit that in view of the urgency of the case, the provisions Sub section 4 of the 17 of the Act had been invoked dispensing with enquiry under section 5-A of the Act. Specific stand was taken that bore well was dug and the fencing was erected only after the publication of notification under section 4(1) of the Act. The other aspects had been specifically denied.

On a careful scrutiny of Section 4(1) notification issued by the respondent No.1 and also the averments made in the counter-affidavit filed by the respondent No.2, except stating that in view of the urgency of the case the provisions under Sub section (4) of Section 17 of the Act had been invoked dispensing with enquiry under Section 5-A of the Act, no other acceptable material has been placed before this Court. It is also pertinent to note that none of the reasons have been spelt out or specified even in the 4(1) notification issued by the 1st respondent.

Sub Section (4) of Section 17 of the Act dealing with the special powers in cases of urgency specifies as hereunder:

> “In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct, a declaration may be

made under Section 6 in respect of the land at any time after causing public notice under Section 4, sub-section(1).”

Sub Section 5 (a) and (b) of Section 17 reads as hereunder:

“(5) (a) In any case where the State Government have directed under sub-section (4) that the provisions of Section 5-A shall not apply, the Collector shall take possession of the land within three months thereof.

(b) If, however, the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of Section 5-A shall apply as if there is no such direction that Section 5-A shall not apply, and in all such cases the period of thirty days referred in Section 5-A shall be reckoned from the date of expiration of three months specified in clause (a).”

In NARAYAN v. STATE OF MAHARASHTRA the Apex Court at para 28 held as hereunder:

“The High Court opined that the presumption of regularity, attached to an order containing a technically correct recital, did not operate in cases in which Section 106 Evidence Act was applicable as it was to the cases before us. We do not think that we can lay down such a broad general proposition. An order or notification, containing a recital, technically correct on the face of it, raises a presumtion of fact under Section 114 illustration (e) of the Evidence Act. The well-known maxim of law on which the presumption found in illustration (e) to Section 114 of Evidence Act is: "Omnia Praesumuntur rite esse acta" (i. e. all acts are presumed to have been rightly and regularly done). This presumption, however, is one of fact. It is an optional presumption. It can be displaced by circumstances indicating that the power lodged in an authority or official has not been exercised in accordance with the law. We think that the original or stable onus laid down by Sec. 101 and Section 102 of the Evidence Act cannot be shifted by the use of Sec. 106 of the Evidence Act, although the particular onus of proving facts and circumstances lying especially within the knowledge of the official who formed the opinion which resulted in the notification under Sec. 17 (4) of the Act rests upon that official. The recital, if it is not defective, may obviate the need to look further. But, there may be circumstances in the case, which impel the Court to look beyond it. And, at that stage, Section 106 Evidence Act can be invoked by the party assailing an order or notification. It is most

unsafe in such cases for the official or authority concerned to rest content with non-disclosure of facts especially within his or its knowledge by relying on the sufficiency of a recital. Such an attitude may itself justify further judicial scrutiny."

In STATE OF PUNJAB v. GURDIAL SINGH the Apex Court while dealing invocation of emergency powers under Section 17 of the Act held as hereunder:

"The fourth point about the use of emergency power is well taken. Without referring to supportive case-law, it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

In YADAIAH vs. GOVT. OF A.P. the Full Bench while dealing with the aspect of dispensing with Section 5(A) enquiry by the executive, judicially reviewable held as hereunder:

"From the above it follows: that whenever S.5-A enquiry is dispensed with although for providing house sites for Harijans, the court must examine whether there are materials before the authority that would reasonably justify the dispensing with section 5-A enquiry and whether the authority has honestly applied its mind to these matters and excluded all irrelevant considerations. It is equally important for the statutory authorities to note in this connection that the statutory provisions of section 17(1) and 17(2) of the Act do not authorize them to dispense with section 5-A inquiry as a matter of routine. The authorities must ask the right question whether the taking of immediate possession would not brook the minimum delay involved in holding section 5-A enquiry. In considering such questions the acquisition authorities must scrupulously disregard any Government memos such as the one mentioned in Kasi Reddy Papaiah's case that requires them to dispense with section 5-A enquiry in all such cases as a matter of policy.

For all these reasons we agree with the decision of the Full Bench of our Court in T.Narasaiah vs. Bhadraiah and hold that dispensing with section 5-A enquiry by the executive is always judicially reviewable on the grounds mentioned hereinabove. We may mention that the Supreme Court in

> Swadeshi Cotton Mill's case was not prepared to discard the rule of natural justice even though giving of notice could have conceivably affected the production of goods and services vital for the well-being of the community."

In the light of the material placed before this Court and on careful scrutiny of the stand taken by respondent No.2 in the counter-affidavit and also the contents of the notification issued under Section 4(1) of the Act, this Court is specified that the invocation of the urgency clause under Section 17(4) of the Act definitely cannot be sustained. Apart from this aspect of the matter it is no doubt brought to the notice of this Court that possession also was not taken within 3 months as specified by Section 17(5)(A) of the Act. Further, it was also brought to the notice of this Court that the deposit required to be made in case of invocation of urgency clause also had not been complied with. In the light of the reasons, which had been narrated in detail in the affidavit filed in support of the writ petition, this Court is of the considered opinion that dispensing with Section 5-A enquiry is totally unjustifiable. No doubt, the Counsel representing the respondents had placed reliance on the decision of the Division Bench in N.AMMORAYYA v. DIST. SOCIAL WELFARE OFFICER, which is distinguishable on facts.

In the light of the reasons recorded supra the respondents herein are directed to afford opportunity to the Writ Petitioner and to hold enquiry under Section 5-A of the Act in accordance with law.

The Writ Petition is, accordingly, disposed of with the above directions. In the peculiar facts and circumstances of the case, this Court makes no order as to costs.

_____

P.S.NARAYANA, J.

Dated 03-12-2004.

Note: L.R.copy to be marked.

B/O

skmr

..... REGISTRAR

To

1 The Disttrict Collector
Kurnool
2 The Mandal Revenue Officer,

Atmakur Mandal, Khammam District.

3. 2CCs to G.P. for Land Acquisition, High Court Buildings,

Hyderabad(OUT).

4. One Fair copy to the Hon'ble Sri Justice P.S.Narayana (for his

lordship's kind perusal).

5. 8 L.R. copies.

6. The under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

7. The Secretary, A.P. Advocate's Association Library, High Court

Buildings, Hyderabad.

8. 2CD copies